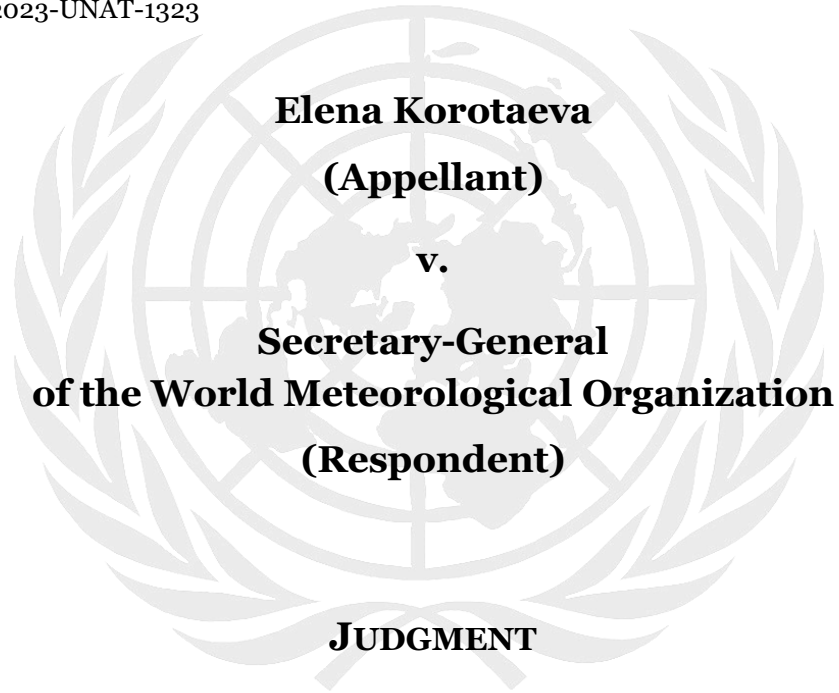




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1323



Before: Judge Gao Xiaoli, Presiding
Judge John Raymond Murphy
Judge Dimitrios Raikos

Case No.: 2022-1666

Date of Decision: 24 March 2023

Date of Publication: 13 April 2023

Registrar: Juliet Johnson

Counsel for Appellant: Anca Apetria/Edward P. Flaherty

Counsel for Respondent: Daniel Trup

JUDGE GAO XIAOLI, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Elena Korotaeva, a former staff member with the World Meteorological Organization (WMO) in Geneva, contested the decision not to pay her a termination indemnity upon separation from service due to abolition of post. By Judgment No. UNDT/2021/158, the UNDT dismissed the application.

2. Ms. Korotaeva has filed an appeal.

3. For the below reasons, we dismiss the appeal and affirm Judgment No. UNDT/2021/158.

Facts and Procedure

4. Ms. Korotaeva was born on 7 June 1957.

5. On 1 July 1999, Ms. Korotaeva was appointed to WMO as a G-6 Human Resources Assistant. On 15 May 2007, she was awarded a permanent appointment.

6. By Memorandum of 27 March 2019 to the Assistant Secretary-General of WMO, Human Resources Division (HRD), WMO confirmed that Ms. Korotaeva's permanent appointment was due to expire on 30 June 2019 and requested a decision concerning the extension of her appointment while indicating that she "would like to continue working up to the new maximum age limit of 65 years". Ms. Korotaeva's appointment was subsequently extended until 30 June 2022.

7. By Memorandum of 4 May 2020, the Chief, HRD, WMO, notified Ms. Korotaeva that her permanent appointment would be terminated following a reorganization within WMO, and that she would be separated from service on 31 August 2020.

8. On 18 May 2020, following a request for clarification from Ms. Korotaeva, she was informed that, pursuant to WMO Staff Rule 193.3(c), she was ineligible to receive payment of a termination indemnity because she would receive a full pension from the United Nations Joint Staff Pension Fund (UNJSPF).

9. On 26 May 2020, Ms. Korotaeva wrote to the Secretary-General of WMO to request reconsideration of the decision not to pay her a termination indemnity arguing *inter alia* that, as a staff member subject to termination, she was automatically entitled to such payment.
10. By letter dated 2 June 2020, the Administration responded reiterating Ms. Korotaeva's ineligibility for the payment of a termination indemnity.
11. On 22 June 2020, Ms. Korotaeva requested management evaluation of the decision not to pay her a termination indemnity.
12. By Management Evaluation Report (MER) dated 27 July 2020, the Internal Oversight Office (IOO), WMO decided to uphold the contested decision.
13. On 31 August 2020, Ms. Korotaeva was separated from service at the age of 63.
14. On 22 October 2020, Ms. Korotaeva filed an application before the UNDT.
15. By Order No. 173 (GVA/2020) of 18 November 2021, the UNDT *inter alia* instructed the Respondent to file the WMO Staff Regulations and Rules that were applicable at the time the contested decision was taken and ordered the parties to file their respective closing submissions by 29 November 2021. On 19 November 2021, the Respondent filed the 2019 WMO Staff Regulations and Rules. On 22 November 2021, following further review, the Respondent filed an amended reply to Order No. 173 (GVA/2020) attaching the 2020 WMO Staff Regulations and Rules.
16. On 22 December 2021, the UNDT issued Judgment No. UNDT/2021/158, dismissing Ms. Korotaeva's application.
17. At the outset, the UNDT considered the scope of judicial review. The UNDT found that Ms. Korotaeva misconstrued the nature of the outcome of the management evaluation when it identified the IOO's MER response as the final impugned decision. The UNDT recalled that the Administration's response to a request for management evaluation is not a reviewable decision and concluded that it would not adjudicate her arguments in relation to the IOO's responses to her request for management evaluation.

18. Turning to the question of whether the contested decision was lawful, the UNDT found that the provisions governing WMO staff members' eligibility for termination indemnity are codified in the WMO Staff Regulations and Rules. Since the decision had been made on 18 May 2020, the 2020 version of the WMO Staff Regulations and Rules was applicable.

19. The UNDT noted that it followed from WMO Staff Regulation 9.3 and WMO Staff Rules 193.2(d) and 193.3(c) and Article 28 of the UNJSPF Regulations, that a WMO staff member is not eligible to the payment of a termination indemnity, if his or her age at the time of separation from service was the normal retirement age or more, the contributory service was five years or longer, and he or she was entitled to a retirement benefit.

20. The UNDT further noted that since Ms. Korotaeva had joined WMO on 1 July 1999, her normal retirement age was 62 pursuant to Article 1 of the UNJSPF Regulations. When she separated from the Organization, she was 63 years old, she had thus exceeded the normal retirement age and contributed to the UNJSPF for more than five years. Since this entitled her to a retirement benefit under Article 28 of the UNJSPF Regulations, the UNDT found that Ms. Korotaeva was ineligible for the payment of a termination indemnity pursuant to WMO Staff Rule 193.3(c).

21. The UNDT also dismissed Ms. Korotaeva's contention that her case did not fall under the exception provided for in WMO Staff Rule 193.2(d)(v), according to which the termination indemnity was not paid to a staff member who was retired under the UNJSPF Regulations. The UNDT noted that the determining elements of a retirement benefit under the UNJSPF Regulations were age and contributory service at the time of separation, the reasons behind a separation from service being irrelevant. The UNDT further noted that regardless of the applicability of WMO Staff Rule 193.2(d)(v), WMO Staff Rule 193.3(c) set forth an independent and unambiguous condition governing staff members' entitlement to benefits, namely, that the termination indemnity will only be paid when the staff member concerned will not receive a retirement benefit under Article 28 of the UNJSPF Regulations.

22. Considering that at the time of her separation from service, Ms. Korotaeva had exceeded the normal retirement age, that she had contributed to the UNJSPF for more than five years and that she had not secured further employment with another entity member of the UNJSPF that could have allowed her to continue her contributions to the UNJSPF, she was entitled to a retirement benefit. The UNDT concluded that her case fell squarely within the scope of

WMO Staff Rule 193.2(d)(v), and accordingly, Ms. Korotaeva was not entitled to a termination indemnity under WMO Staff Rule 193.2.

23. Finally, the UNDT dismissed Ms. Korotaeva's contention that Article 32 of the UNJSPF Regulations allows her to defer her entitlement to a retirement benefit, thus avoiding the provision of WMO Staff Rule 193.3(c). The UNDT found that while a staff member may elect to defer the exercise of his/her choice of benefit, or between a form of benefit involving payment in a lump sum and another form, for a maximum period of 36 months, such deferment does not affect the entitlement date as of which Ms. Korotaeva's benefit is to be calculated and paid pursuant to Article 28 of the UNJSPF Regulations. The UNDT found that WMO Staff Rule 193.3(c) remained applicable regardless of whether Ms. Korotaeva requested payment of her benefit upon her separation from service or decided to defer such payment to a later date. She was thus ineligible for the payment of a termination indemnity and, therefore, the contested decision was not unlawful.

24. On 15 February 2022, Ms. Korotaeva filed an appeal, and on 7 March 2022, the WMO Secretary-General filed his answer.

Submissions

Ms. Korotaeva's Appeal

25. Ms. Korotaeva submits that in relation to the scope of judicial review, the UNDT erred in law in finding that, because the outcome of the MER is not an appealable decision, any information disclosed during that process should be disregarded. Since a MER is a compulsory step before the submission of an application to the UNDT, it would be unreasonable to find that the evidence or facts revealed through that process are unusable by the UNDT or by an applicant, especially in cases where those facts and evidence are not contested by the Organization concerned. Unlike mediation or negotiation processes, the MER is not confidential. The information submitted by the Administration itself to the IOO, and which was not contested during the application before the UNDT, but rather acknowledged, should be considered admissible evidence to adjudicate this case.

26. Ms. Korotaeva contends that the UNDT further erred in law in retroactively applying Staff Rule 193.3(c) (as amended after the impugned decision was taken on 18 May 2020) when it examined Ms. Korotaeva's right to a termination indemnity. In doing so, the UNDT violated the

principles of good faith and of non-retroactivity of law. At the time the impugned decision was taken, on 18 May 2020, only the 2019 WMO Regulations and Rules were in force and applicable to Ms. Korotaeva's right to termination indemnity. Indeed, although WMO Staff Rule 193.3(c) was subsequently amended with the aim of prohibiting the payment of a termination indemnity in connection with the receipt of retirement benefits, that amended rule does not apply to the present case, by virtue of the principle of non-retroactivity of norms.

27. Ms. Korotaeva avers that the UNDT also erred in law and fact in holding that the retirement benefit under the UNJSPF Regulations depends upon "age and contributory service at the time of separation", and not upon the reasons behind the separation, and that it was irrelevant whether Ms. Korotaeva had intended to work until the age of 65. Ms. Korotaeva did not retire when she was separated from service by WMO, and she was not in receipt of pension benefits from the UNJSPF; rather, she was terminated unilaterally by WMO, less than two years before reaching the mandatory retirement age, which entitled her to a termination indemnity based on the WMO Staff Rule in force at that time. Ms. Korotaeva had the right to work until her mandatory age of separation (65 years) under the applicable WMO Regulations and Rules, and she intended to avail herself of that right. It was only at that time that the termination indemnity could have been denied to her according to the WMO Staff Rules. Consequently, she was entitled to a termination indemnity in line with Staff Rule 193.2 as none of the exceptions stipulated in Staff Rule 193.2(d) applied to her case.

28. Moreover, the UNDT erred in law in finding that payment of a termination indemnity is dependent upon the receipt of retirement benefits. The connection between the right to termination indemnity provided for in the WMO Staff Rules and the right to retirement benefits for staff having reached the "normal age of retirement" as stipulated in Article 28 of the UNJSPF Regulations did not exist in 2019 WMO Staff Rules. Therefore, any arguments that Ms. Korotaeva had reached the normal UNJSPF retirement age and could have received a retirement benefit, and that, for that reason, she was not entitled to a termination indemnity under WMO Staff Rules, is devoid of merit. As the Appellant had her contract terminated by WMO due to its needs, well before she had reached the WMO mandatory age of separation, any reference to the Staff Rules relating to retirement under Article 28 of the UNJSPF Regulations is without merit. Without prejudice to the above, the Appellant submits that the criterion of "normal retirement age" is pertinent to the UNJSPF Regulations only to determine the payment of pension benefits upon retirement of staff from their Organization. It does not appear in the WMO Staff Rules as a

criterion for the payment of termination indemnities to staff who are separated from WMO. The WMO Staff Rules do not provide that the termination indemnity is excluded when a staff member who is separated and who is eligible for retirement benefits because she has reached the “normal retirement age” according to the UNJSPF Regulations, instead intends to continue to work and contribute to her pension until her mandatory retirement age of 65.

29. Finally, Ms. Korotaeva says that the UNDT erred in law in establishing a new connection between WMO Staff Rule 193.3(c), Articles 28 and 32 of the UNJSPF Regulations and Section I.1 of the UNJSPF Administrative Rules, to claim that it results from a joint interpretation of those provisions that Ms. Korotaeva was ineligible for a termination indemnity. The connection between the various provisions above does not exist in the WMO Staff Rules. Most importantly, the UNDT's misinterpretation of the UNJSPF Regulations in connection with the WMO Staff Rules contradicts WMO Staff Rule 193.3(c). Indeed, according to the wording of WMO Staff Rule 193.3(c), which the UNDT intentionally omits, the termination indemnity shall not be paid to the staff member who, upon separation, will receive a retirement benefit under Article 28 of the UNJSPF Rules. That provision does not refer to the entitlement to a retirement benefit as a reason for non-payment of a termination indemnity, but to the receipt of said benefit, which was not the Appellant's case. Consequently, the UNDT's finding that the Appellant was ineligible for a termination indemnity was made in error and should be dismissed.

30. Ms. Korotaeva requests that UNAT reverse the UNDT Judgment, rescind the decision not to pay her a termination indemnity upon her separation from service, order WMO to pay her the termination indemnity in line with the WMO Rules, namely 12 months of her last gross salary, order WMO to pay her moral damages in an amount equivalent to three months of gross salary, and order WMO to pay her legal fees.

The WMO Secretary-General's Answer

31. The Secretary-General contends that the UNDT correctly dismissed Ms. Korotaeva's contention that the IOO's management evaluation review was the final impugned decision, finding that management evaluation is not a reviewable decision. Ms. Korotaeva's submission that she had thereby been prevented from adducing evidence revealed by the IOO management review process is inaccurate. The UNDT fully considered the arguments presented by Ms. Korotaeva and it remains unclear as to what specific submissions or evidence regarding the administrative decision were ignored by the UNDT.

32. The Secretary-General accepts that the UNDT incorrectly referenced a subsequent revision of Staff Rule 193.3(c) which was not applicable at the time of the administrative decision. He however submits that this error would not have altered the reasoning provided by the UNDT in refusing Ms. Korotaeva's request for a termination indemnity. During the UNDT process, the 2020 version of the WMO Staff Regulations and Rules was inadvertently submitted to the UNDT which contained the subsequent revision to Staff Rule 193.3(c) referencing the term "retirement benefit" as opposed to the original term "pension benefit". It was this change that was referenced in error in the UNDT Judgment. However, the Secretary-General submits that this clerical error does not and could not have led to any different outcome. WMO Staff Rule 193.3(c), as applicable to Ms. Korotaeva, was explicit in its application and referred to any pension benefit a staff member would receive upon separation. The retirement benefit, by its very definition would be included in this provision. Crucially the change from "pension benefit" to "retirement benefit" did not affect and could not have affected the Appellant's ineligibility for a termination indemnity. Indeed, in the entirety of the Appellant's submissions it is noteworthy that she fails to identify even how such an error would have affected the outcome or explain why a "retirement benefit" should not be considered as a "pension benefit".

33. As to Ms. Korotaeva's contention that the UNDT failed to consider that she was terminated from service less than two years before the mandatory age of separation, the Secretary-General contends that Ms. Korotaeva cannot derive an entitlement to a termination indemnity based solely on Staff Regulation 9.3. A review of all associated Staff Rules which govern the terms of any appointment must be made. In that regard, Staff Rule 193.2(d) as well as Staff Rule 193.3(c) limit the payment of the termination indemnity to a staff member reaching the normal age of retirement and receiving a pension benefit.

34. In response to Ms. Korotaeva's contention that the UNDT failed to properly consider that she would have been able to work until 65 and so consequently had effectively not yet retired, the Secretary-General submits that Ms. Korotaeva conflates "mandatory age of separation" with the term "normal age of retirement". The mandatory age of separation is simply the age at which staff members shall not be retained in active service and it is in no way connected to a staff member's eligibility for a retirement benefit. As correctly articulated by the UNDT, it was immaterial whether Ms. Korotaeva had intended to work until she was 65 and had reached the mandatory age of separation. The issue was what benefit she would receive upon separation of employment from WMO having exceeded the normal age of retirement. In this case, as

identified by the UNDT, pursuant to Article 28 of the UNJSPF Regulations, Ms. Korotaeva exceeded the normal age of retirement and therefore could receive the retirement benefit.

35. The Secretary-General submits that there is no merit to Ms. Korotaeva's contention that she was entitled to a termination indemnity since she had chosen not to receive her pension benefit. Since Ms. Korotaeva had exceeded the normal age of retirement and had not secured any other employment within the United Nations common system, she received her retirement benefit. The deferment of payment does not affect the amount Ms. Korotaeva would receive or the date upon which she would be entitled to receive the benefit. Her pension benefit vested on 1 September 2020, the day following her termination of appointment. Any subsequent pension benefit payment will be calculated from 1 September 2020, regardless of whether the Appellant requested a deferment of payment. A deferment in payment is merely a reflection that the Appellant delayed in deciding on whether to receive a periodic benefit at the full rate or a benefit at a reduced rate accompanied by a lump sum. Consequently, the Secretary-General, while accepting that the UNDT Judgment incorrectly referenced the revised Staff Rule, submits that this would not have altered the reasoning provided by the Dispute Tribunal in refusing the Appellant's request for a termination indemnity.

36. Finally, the Secretary-General submits that were the UNAT minded to rescind the UNDT Judgment with respect to Ms. Korotaeva's right to a termination indemnity, then any request for moral damages and legal fees must be dismissed.

37. The Secretary-General requests that UNAT dismiss the appeal in its entirety.

Considerations

38. The main issue in this case is whether the UNDT erred in fact and in law in finding that Ms. Korotaeva was not entitled to receive a termination indemnity.

The applicable rules in this case

39. Ms. Korotaeva submits that the UNDT erred in law in retroactively applying WMO Staff Rule 193.3(c) when it examined her right to a termination indemnity. At the time the impugned decision was taken, only the 2019 WMO Staff Regulations and Rules were in force and should have been applied. In the submission of the Secretary-General, it has been mentioned that:¹

During the UNDT process, WMO submitted two sets of Staff Regulations and Rules for 2019 and 2020. An erroneous version of Staff Regulations and Rules for 2020 was inadvertently submitted to the UNDT which contained the subsequent revision to Staff Rule 193.3(c) referencing the term “*retirement benefit*” as opposed to the original term “*pension benefit*”. It was this change that was referenced in error in the UNDT judgment.

The Secretary-General identified in the answer submission that “the subsequent change to Staff Rule 193.3(c) [was] implemented on 21 September 2020”. The Secretary-General accepted that “the UNDT judgment incorrectly referenced the revised staff rule”. In this case, Ms. Korotaeva was separated from service on 31 August 2020. The Rule in force at the time the impugned decision was taken should prevail, which means the 2019 WMO Staff Rule 193.3(c) should be applied in this case. The UNDT made an error in applying the law based on the Secretary-General’s submission of the wrong version of the WMO Regulations and Rules to the UNDT.

40. Concerning the scope of judicial review in this case, the UNDT did not adjudicate Ms. Korotaeva’s arguments in relation to the IOO’s responses to her request for management evaluation. The UNDT found that the Administration’s response to a request for management evaluation is not a reviewable administrative decision. We uphold this decision. Ms. Korotaeva contends that the UNDT erred in law in finding that, because the outcome of the management evaluation request is not a reviewable administrative decision, any information disclosed during that process should be disregarded. It seems that Ms. Korotaeva is attempting to show that the wrong version of the WMO Staff Regulations and Rules had been applied by the UNDT with the outcome of the MER. The Appeals Tribunal does not need to further discuss this issue since on appeal, the Secretary-General acknowledges that indeed he had provided the wrong version of the Staff Regulations and Rules to the UNDT.

¹ Original emphases. Internal footnote omitted.

The interpretation of WMO Staff Rule 193.3(c)

41. Now, the key issue of this appeal is whether the application of the 2019 WMO Staff Rule 193.3(c) will lead to a different conclusion compared with the application of the 2020 WMO Staff Rule 193.3 (c) in the UNDT process.

42. Staff Rule 193.3(c) of the 2019 WMO Staff Regulations and Rules reads as follows:²

Termination indemnity shall not be paid to any staff member who, upon *separation*, will receive a *pension benefit* under the Regulations of the United Nations Joint Staff Pension Fund or compensation for permanent total disability under Rule 162.4[.]

43. By comparison, this Staff Rule after an amendment in 2020 states as follows:³

Termination indemnity shall not be paid to any staff member who, upon *separation from service*, will receive a *retirement benefit* under Article 28 of the Regulations of the United Nations Joint Staff Pension Fund or compensation for permanent total disability under Rule 162.4[.]

44. The Appellant asserts that the notion of “pension benefit” does not establish a connection between the right to termination indemnity under the WMO Rules and the receipt of retirement benefits under Article 28 of the UNJSPF Regulations. Conversely, the Respondent argues that the retirement benefit would be included in the pension benefit by its definition. In this regard, the interpretation of “pension benefit” and “retirement benefit” will be the premise to determine the Appellant’s entitlement to such a termination indemnity.

45. We shall recall textualism as a method of judicial interpretation of law, also known as literal interpretation, which means that the words used in the legal text must be read and understood in their literal sense.

46. The definition of “pension” in the Merriam-Webster Dictionary is “a fixed sum paid regularly to a person: a) wage; b) a gratuity granted (as by a government) as a favor or reward; c) one paid under given conditions to a person following retirement from service or to surviving dependents”. In the Cambridge Dictionary, “pension” has a similar meaning as “an amount of money paid regularly by the government or a private company to a person who does not work any more because they are too old or have become ill”. In light of the literal explanation, a

² Emphases added.

³ Emphases added.

“retirement benefit” due to separation from service should fall under the broader notion of “pension benefit”.

47. The intention of WMO Staff Rule 193.3(a) is to set out the computation of a termination indemnity. It is evident that all the following paragraphs concern the termination indemnity. Correspondently, paragraph (c) constitutes an exception to the payment of the termination indemnity. The scope of “retirement benefit” as exception is smaller than that of “pension benefit”. Accordingly, the Appeals Tribunal agrees with the arguments of the Secretary-General that “WMO staff rule 193.3(c), as applicable to the Appellant, was explicit in its application and referred to any pension benefit a staff member would receive upon separation. The retirement benefit ... which the Appellant received, by its very definition would be included in this provision”.⁴

The interlink of the rules

48. WMO Staff Regulation 9.3 reads as follows: “If the Secretary-General terminates an appointment under Regulation 9.2 the staff member shall be given notice and indemnity payment in accordance with the terms of his appointment.”

49. WMO Staff Rule 193.2, entitled “Termination indemnity”, states:

Staff members whose appointments are terminated under Regulation 9.2 shall be paid an indemnity in accordance with the following provisions:

...

(d) No indemnity payments shall be made to:

...

(v) A staff member who is retired under the Regulations of the United Nations Joint Staff Pension Fund.

50. WMO Staff Rule 193.3, entitled “Computation of termination indemnity”, provides in paragraph (c): “Termination indemnity shall not be paid to any staff member who, upon separation, will receive a pension benefit under the Regulations of the United Nations Joint Staff Pension Fund or compensation for permanent total disability under Rule 162.4[.]”

⁴ Original emphasis.

51. Article 28(a) of the UNJSPF Regulations provides: “A retirement benefit shall be payable to a participant whose age on separation is the normal retirement age or more and whose contributory service was five years or longer.”

52. Article 1 of the UNJSPF Regulations provides in relevant part:⁵

DEFINITIONS

In these Regulations, and in the Administrative Rules, unless the context otherwise requires:

...

(n) “*Normal retirement age*” shall mean age 60, except that it shall mean age 62 for a participant whose participation commences or recommences on or after 1 January 1990 but before 1 January 2014, and age 65 for a participant whose participation commences or recommences on or after 1 January 2014.

53. According to Article 28(a) of the UNJSPF Regulations, Ms. Korotaeva shall be paid a retirement benefit if separated at the normal retirement age or more and if her contributory service was five years or longer. According to Article 1 of the UNJSPF Regulations, the “normal retirement age” for Ms. Korotaeva shall mean age 62, since she joined WMO on 1 July 1999. Ms. Korotaeva separated from service at age 63. At the same time, her contributory service was much more than five years. Certainly, Ms. Korotaeva will receive a retirement benefit under the Regulations of the UNJSPF. With the understanding of “retirement benefit” belonging to the “pension benefit”, Ms. Korotaeva met the condition of “termination indemnity shall not be paid to” set out by WMO Staff Rule 193.3(c). Accordingly, the Appeals Tribunal finds that Ms. Korotaeva is ineligible to the payment of termination indemnity. We agree with the conclusion of the UNDT. Crucially, the change of rule from “*pension benefit*” to “*retirement benefit*” did not affect and could not have affected the Appellant’s ineligibility for termination indemnity.

54. The Appellant argues that she was separated from service by WMO unilaterally at a time when she still had the right to work. According to WMO Staff Regulation 9.2(a), the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment under certain circumstances, one of which applies to Ms. Korotaeva, i.e. the abolition of post. Accordingly, Staff Rules 193.2 and 193.3 list the payment of the termination

⁵ Original emphasis.

benefit and its exception in different scenarios of separation. Pursuant to Article 28 of the UNJSPF Regulations, the entitlement of a retirement benefit turns on two requirements, namely the age and the length of contributory service at the time of separation, which the Appellant both satisfied when she was separated from service with WMO. For this reason, she is entitled to a retirement benefit under this article. It follows that she is not entitled to a termination indemnity according to WMO Staff Rule 193.3(c). Obviously, there is no connection between the reason of the separation of service and the qualification for a termination indemnity. The premise of the trigger of Staff Rule 193.3(c) is just that the Appellant is entitled to receive a retirement benefit under the UNJSPF Regulations.

55. Ms. Korotaeva's arguments that the UNDT erred in law and fact in holding that the retirement under the UNJSPF Regulations depends upon "age and contributory service at the time of separation", and not upon the reasons underlying the separation, is based on a misunderstanding of the UNJSPF Regulations. The connection between the right to a termination indemnity provided for in the WMO Staff Rules and the right to retirement benefits for staff having reached the "normal age of retirement" as stipulated in Article 28 of the UNJSPF Regulations does exist in the 2019 WMO Staff Rules. While the Appellant denied the connection between the eligibility for a termination indemnity under the WMO Staff Rules and the receipt of a retirement benefit under Article 28 of the UNJSPF Regulations, she failed to bring up a reasonable assumption that if not considered as the retirement benefit in Article 28, which article of the UNJSPF regulations would be involved where Staff Rule 193.3(c) applies. All the provisions cited above concern the termination indemnity granted upon separation from service. The change of wording from "pension benefit" to "retirement benefit" in WMO Staff Rule 193.3(c) makes no difference for the purpose of deciding the Appellant's eligibility to receive such kind of benefit due to her separation.

56. Therefore, we find that the Appellant is not entitled to a termination indemnity pursuant to the applicable WMO Staff Rules.

Deferment of the retirement benefit

57. Article 32 of the UNJSPF Regulations entitled "Deferment of payment or choice of benefit" provides: "(a) The payment to a participant of a withdrawal settlement, or the exercise by a participant of a choice among available benefits, or between a form of benefit involving

payment in a lump sum and another form, may be deferred at the participant's request for a period of 36 months.”

58. Section I.1 of the UNJSPF Administrative Rules provides that an “[e]ntitlement to a benefit shall ... vest in a participant ... on the day succeeding the last day of contributory service”. Accordingly, deferment of the retirement benefit does not affect the entitlement date as of which Ms. Korotaeva's benefit is to be calculated and paid pursuant to Article 28 of the UNJSPF Regulations. We agree with the UNDT's analysis in this regard. Since Ms. Korotaeva's separation date is 31 August 2020, whether she requested or received such benefit from the UNJSPF or not will not affect the application of WMO Staff Rule 193.3(c).

59. Since Ms. Korotaeva is not entitled to the payment of a termination indemnity, any request for moral damages and legal fees must be dismissed.

60. To sum up, even though the UNDT made an error in applying the law, the conclusion of the UNDT Judgment is reasonable.

Judgment

61. The Appellant's appeal is dismissed, and Judgment No. UNDT/2021/158 is hereby affirmed.

Original and Authoritative Version: English

Dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 13th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar